IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

THURSDAY, THE 22ND NOVEMBER 2007 / 1ST AGRAHAYANA 1929

WP(C).No. 34386 of 2007(R)

AGAINST THE ORDER DATED 01/11/2007 IN EP 298/2006 IN OS.716/2003 of PRL. Sub Court,ERNAKULAM

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PETITIONERS:

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1. ANNIE JOSEPH, AGED ABOUT 46 YEARS,
   W/O.K.J.JOSEPH, KIZHAKKAYIL HOUSE,
   NO.31/1653, THAMMANAM, KOCHI - 25.

2. . K.J.JOSEPH, AGED ABOUT 50 YEARS,
   S/O.JOSEPH, KIZHAKKAYIL HOUSE,
   NO.31/1653, THAMMANAM, KOCHI - 25.

BY ADV. SRI.ZAKEER HUSSAIN
SMT.K.A.SANJEETHA

RESPONDENT:

THE FEDERAL BANK LTD.,
SOUTH BRANCH, ERNAKULAM.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 22/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C) 34386/07

Appendix

Petitiones' Exts:

Ext.P1 true copy of E.P. 298 of 2006 in OS 716 of 2003 on the file of Principal Sub Court, Ernakulam.

Ext.P2 true copy of the objection to Rule 66 notice in EP 298 of 2006 in OS 716 of 2003 on the file of Principal Sub Court, Ernakulam.

Ext.P3 true copy of the order dated 1.11.2007 in EP 298 of 2006 in OS 716 of 2003 on the file of Principal Sub Court, Ernakulam.

M.N.Krishnan, J.

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W.P(C).No.34386 of 2007

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Dated this the 22nd day of November, 2007.

JUDGMENT

This Writ Petition is preferred to set aside Ext.P3 order passed by the Subordinate Judge, Ernakulam in E.P.No.298 of 2006 in O.S.No.716 of 2003. By the said order, the court had directed the property be sold in auction and as a matter of precaution directed to be published in the Mathrubhoomi Daily as well. Learned counsel for the decree holder - Bank has submitted before me that it is a mortgaged decree. In the decision of this Court reported in **Dhanalakshmi Bank** v. **Divakaran** - 2000(2) K.L.T. 231, it is held as follows:

> "What is to be noted here is that it is given to the court passing the preliminary decree for sale, to order either the sale of the whole of the mortgaged property or the sale of sufficient part of the mortgaged property. Once this power of directing sale either of the whole or of the portion is exercised by the Court which passes the decree, it is clear that the executing court has no power to go behind that direction in the decree and to alter either the mode of sale ordered or to consider whether anything less than what is directed by the decree to be sold, need alone be sold."

In the light of this pronouncement the contention raised by the writ petitioner is not sustainable.

2. Next point to be considered is regarding the price. When it is a mortgaged decree it is desirable that the court fixes a reserve price or an upset price. It is seen that the amount due on the date of passing of the order is about Rs.8,09,167/-. The upset price fixed is Rs.9.5 lakhs. Further the petitioner would contend for the position that the property is worth Rs.23 lakhs.

3. The court has directed that the value shown by the judgment debtor will be taken first for the sale of the property and if there are no bidders the property will be put in auction at the rates shown by the decree holder. So all the necessary formalities that are to be applied had been complied with and therefore, the order does not suffer from any infirmities or illegalities and so, the Writ Petition stands dismissed.

M.N.Krishnan,
Judge.

ess 24/11